Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-120

DOUGHERTY COUNTY, GEORGIA BOARD OF EDUCATION, R. H. WARREN, Chairman, Dougherty County Board of Education; FRANKLIN U. CROSS, J. P. CHEEVERS, HARVEY COHEN, MORGAN MURPHY, CHUCK NESBITT, FELIX MARBRY, JR., Members, Dougherty County Board of Education; PAUL ROBERTSON, Superintendent, Dougherty County School System, Individually and in their official capacities,

Appellants

versus

JOHN E. WHITE,

Appellee

Appeal from a Three-Judge Court in the United States District Court for the Middle District of Georgia, Albany Division

---

MOTION TO AFFIRM

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Appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States and the letter of the Office of the Clerk dated September 8, 1977, moves that

the final judgment of the district court be affirmed on the ground that the question is insubstantial and does not warrant further argument.

STATEMENT

This is a direct appeal from the final judgment of a three judge district court specially constituted pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284 entered the 28th day of April, 1977. That district court granted appellee a permanent injunction, pursuant to Section Five of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, enjoining the implementation of Rule 58 of the Board of Education of Dougherty County, Georgia, which required that employees offering for public elective office were required to take a leave of absence without pay during the period of their candidacy. The district court ruled that Rule 58 constituted a change in practice which required submission to the United States District Court or the United States Attorney General as required by Section Five of the Voting Rights Act.

Appellee concurs with the Statement of the Case as set forth in Appellants' Statement as To Jurisdiction. Appellee would add however that by letter dated August 26, 1976 the United States Attorney General advised Appellants that the change reflected by the adoption of Rule 58 was subject to the requirements of Section Five of the Voting Rights Act of 1965. In addition, Appellee John White alleged that he was the first Black citizen in recent history to seek election from Dougherty County to the Georgia State House of Representatives.

ARGUMENT

THE DECISION OF THE DISTRICT COURT SHOULD BE AFFIRMED BECAUSE THE QUESTION PRESENTED IS NOT A SUBSTANTIAL QUESTION.

The three judge district court held that the State of Georgia is "covered" by the pre-clearance requirements of Section Five of the Voting Rights Act of 1965. The court further held that Section Five, as broadly interpreted, sweeps "over all phases of the electoral system" including any modification to the political process. The district court ruled that "Rule 58 . . . is such a modification of the political process. By imposing a financial loss on its employees who choose to become candidates, it makes it more difficult for them to participate in the democratic process and, consequently, restricts the field from which the voters may select their representatives." (Appendix, p. 7a). Since the Appellant Board of Education had never submitted the change reflected in Rule 58 to either the United States District Court for the District of Columbia or the United States Attorney General, the enforcement and implementation of Rule 58 was in violation of Section Five of the Voting Rights Act of 1965.

The result reached by the district court is controlled by the broad interpretation of the coverage of Section Five given that section by this Court in *Allen* v. *Board of Elections*, 393 U.S. 544 (1969); *Perkins* v. *Matthews*, 400 U.S. 379 (1971); and *Georgia* v. *United States*, 411 U.S. 526 (1973). The decision of the district court below did not of course rule that Rule 58 did in fact discriminate. That decision is, in the first instance, left to the United States District Court for the District of Columbia or the United States Attorney General. The decision of the district court was limited to the question of whether this change was subject to the pre-clearance provisions of Section Five.

Finally, although not raised directly by the Appellants, the question of whether an entity such as the Board of Education, which does not register electors, is covered by Section Five is before this Court in *United States of America* v. *Board of Commissioners of Sheffield, Alabama*, No. 76-1662, probable jurisdiction noted June 27, 1977. On this question, Appellee incorporates herein by reference the Brief of the United States of America filed in that appeal.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Appellees have presented no substantial question for the decision of this Court, and that the judgment and decree of the district court should be affirmed.

Respectfully submitted,

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Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion to affirm has been served upon Jesse W. Walters, Esquire, Post Office Box 527, Albany, Georgia 31702, counsel of record for appellants by mailing a copy of said motion to him, first class postage prepaid, addressed as above.

This 14th day of October, 1977.

ELIZABETH R. RINDSKOPF
Attorney for Appellant